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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,164	02/26/2002	Stephen G. Kelly	A539WTN.	8036
7590 Michael A. Silco, Jr. Microsemi Corporation Suite 900 740 E. Campbell Road Richardson, TX 75080				
			EXAMINER PHAM, HOAI V	
			ART UNIT 2892	PAPER NUMBER
			MAIL DATE 03/25/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: STEPHEN G. KELLY, KENNETH R. PHILPOT, HENRICUS  
BERNADUS ANTONIUS GIESEN & WILLIAM E. DOHERTY, JR.

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Application No. 10/085,164  
Technology Center 2800

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Mailed: March 25, 2010

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Before DEBORAH L. PERRY, *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 8, 2010. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated August 17, 2009. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. < While reference to page and line number of the specification \*\*>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 7-17 of the Appeal Brief filed August 17, 2009, is deficient, because it is mapped to the published version of the application, which is improper; it must be

mapped to the specification. Further, it does specifically identify independent Claim 1, 40 & 42, but doesn't separately map it to the specification by page and line number. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

## CONCLUSION

Accordingly,

it is ORDERED that the application is returned to the Examiner:

- 1) hold the Appeal Brief filed August 17, 2009, defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/jsd

Michael A. Sileo, Jr.  
Microsemi Corporation  
Suite 900  
740 E.Campbell Road  
Richardson TX 75080